U.S. v. Wal-Mart Stores, Inc.

FACT SHEET
May 12, 2004

Today's Announcement

- Today, the United States lodged a settlement between the United States, the State of Tennessee, the State of Utah, and Wal-Mart Stores, Inc. In the next few months, we will undertake additional enforcement actions against other nationwide construction customers.

- Wal-Mart is one of the largest retail construction developers in the country, building well over 200 stores each year across the United States under the brand names Wal-Mart Stores, Wal-Mart Supercenters, and Sam's Clubs.

- In 2001, Wal-Mart settled claims that it had violated the storm water requirements at about 17 sites across the country. That settlement called for payment of a $1 million penalty and a compliance and training program.

- After the settlement, follow-up inspections at 24 Wal-Mart stores revealed that violations continued. Specifically, EPA and state inspectors found:
  - failure to obtain permits for some sites
  - discharges of excessive sediment to sensitive water ways
  - failure to install and/or maintain adequate sediment and erosion control devices
  - failure to develop and/or implement a storm water pollution prevention plan
  - failure to inspect sediment control devices to ensure adequacy and condition and that operating properly
  - failure to develop an adequate plan for controlling sediment and minimizing erosion

- Wal-Mart has agreed to a settlement with the United States, the State of Utah, and the State of Tennessee to resolve these violations. This settlement addresses violations at over 24 sites in 9 states (California, Colorado, Delaware, Michigan, New Jersey, South Dakota, Tennessee, Texas, and Utah).

- Under this settlement, Wal-Mart will:
  - pay the largest civil penalty ever paid for violations of the storm water regulations – $3.1 million to be divided between the United States, Tennessee and Utah
  - perform a supplemental environmental project that will result in the protection of sensitive wetlands or waterways in one of the affected states; and
  - develop an extensive compliance program to provide better oversight of the contractors

- The compliance program required by this settlement requires Wal-Mart to take a comprehensive and preventive approach to compliance by focusing on:
  - the use of qualified individuals – Wal-Mart will undertake an extensive training program including: an annual seminar to educate its employees and contractors on storm water controls; a certification program for construction site employees to ensure they know how to prevent excessive discharges; and provision of training materials to site employees
  - careful oversight of its contractors through: regular and frequent inspections by contractor and Wal-Mart employees; documentation of the compliance efforts; and imposition of sanctions by Wal-Mart on its contractors for failure to comply with the storm water requirements

Environmental Harm and Public Health Impacts Associated with Storm Water Runoff

- Uncontrolled storm water runoff from industrial facilities and construction sites harms the environment and public health. According to a 1998 Report to Congress, storm water runoff is a primary cause of impaired water quality in the United States. It contributes to 13 percent of impaired rivers and streams, 21 percent of impaired lakes, 55 percent of impaired ocean shorelines, and 46 percent of impaired estuaries.

- It carries high levels of pollutants like mud and sediment, oil and grease, suspended solids, algae-producing nutrients, heavy metals, toxins and trash into our storm sewers and ultimately into our rivers, lakes, estuaries, wetlands and oceans. A 2000 National Water Quality Assessment reported that pathogens, which contribute to 35% of the reported water quality problems in impaired rivers and streams, are commonly found in storm water runoff from urban areas. All of these pollutants can have significant impact on the environment and on public health. For example, in 1998 more than 1,500 beach closings and advisories were associated with storm water runoff.

Environmental Harm Associated with Storm Water Runoff from Construction Sites

- The amount of sediment or dirt that is transported by storm water runoff from construction sites with no erosion and sediment controls is exponentially greater than from sites with controls. To illustrate, 6,700 pounds of sediment per acre typically comes off a construction site with no controls - which is 107 times greater than the amount of sediment that runs off of undeveloped land. The sheer volume of sediment discharging from a construction site with little or no sediment and erosion control measures results in serious water quality impacts. For example:

  - Sediment-laden runoff results in increased turbidity and decreased oxygen in a stream, which in turn results in loss of in-stream habitat for fish and other aquatic species.

  - Sediment-laden runoff can kill fish directly, destroy spawning beds, and suffocate fish eggs and bottom dwelling organisms.

- Sediment-laden runoff can increase difficulty in filtering drinking water, resulting in higher treatment costs, and can result in the loss of drinking water reservoir storage capacity and decrease the navigational capacity of waterways.

- Sediment-laden runoff blocks light and reduces growth of beneficial aquatic grasses.

- In addition to sediment, runoff from construction sites can also contain pollutants like pesticides, petroleum products, chemicals, solvents, asphalts and acids which also contribute to water quality problems.

The Compliance Status of Construction Activities

- Construction sites over 5 acres have been required to obtain an NPDES permit and install controls to prevent pollutants from leaving these sites for over ten years.

- EPA and the states have spent years educating the regulated community. Compliance assistance efforts have included numerous training opportunities, storm water websites, public service announcements, guidance documents, fact sheets, brochures and model Storm Water Pollution Prevention Plans.

- Despite extensive outreach efforts by EPA and the states, compliance within the construction industry remains poor. Data from EPA and State inspections of industrial facilities indicate that a majority of facilities and sites do not have coverage under an NPDES storm water permit. Of the sites that have applied for permit coverage, non-compliance with permit requirements remains significant.

- **A 2000 Report to Congress estimated that**

  - there are more than 62,000 construction sites over 5 acres that should be obtaining a permit each year;
  - less than one-third (about 20,000) actually obtained permits before breaking ground;
  - inspections by EPA and states indicate that many sites that did obtain permits failed to adequately implement the permits and control sediment and erosion.

- **Many of the steps to control storm water runoff are simple and not costly, including:**

  - planning construction projects to reduce the amount of time soil is left exposed;
  - installing relatively simple and low cost sediment and erosion control devices, such as silt fences and straw bales.

- OECA first designated storm water as a priority area in the FY 1998-1999 MOA Guidance. Storm water will continue as an (MOA) National Priority in FY 2005-2007. We intend to focus our efforts on large-scale developers where there is a company-wide pattern of non-compliance. These developers fall into two categories of large-scale construction operations: (1) commercial development of "big-box" stores and their associated contractors, and (2) large national and residential builders.